

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

WINSTON SMITH, et al., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

V.

FACEBOOK, INC., et al.,

Defendants.

Case No. 5:16-cv-01282-EJD

**ORDER DENYING WITHOUT
PREJUDICE MOTION FOR
APPOINTMENT OF INTERIM CO-
LEAD COUNSEL**

Re: Dkt. No. 80

Citing Federal Rule of Civil Procedure 23(g), Plaintiffs Winston Smith, Jane Doe I and Jane Doe II (“Plaintiffs”) move for an order appointing their counsel as interim co-lead class counsel and approving a structure for representation designating certain counsel as part of an Executive Committee and certain other counsel as part of a Steering Committee. Dkt. No. 80. In support of this request, Plaintiff’s note their suspicion “that the privacy violations alleged in the Complaint are widespread and will result in the filing of numerous related actions nationwide.” For its part, Defendant Facebook, Inc. does not oppose the motion, but “defers to the Court to determine whether interim co-lead counsel is necessary before any related actions are filed.” Dkt. No. 90.

This matter is suitable for resolution without oral argument pursuant to Civil Local Rule 7-3. Accordingly, the hearing scheduled for August 18, 2016, is VACATED, and the court finds, concludes and orders as follows:

1. Pursuant to Federal Rule of Civil Procedure 23(g)(3), the court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action

1 as a class action.” “Instances in which interim class counsel is appointed are those in which
2 overlapping, duplicative, or competing class suits are pending before a court, so that appointment
3 of interim counsel is necessary to protect the interests of class members.” White v. TransUnion,
4 LLC, 239 F.R.D. 681, 683 (C.D. Cal. 2006) (citing Manual for Complex Litigation (Fourth) §
5 21.11 (2004)). “The decision regarding appointment of Lead Counsel is within the discretion of
6 the Court.” Horn v. Raines, 227 F.R.D. 1, 3 (D.D.C. 2005).

7 2. Here, despite the representation made in the motion, Plaintiffs have yet to identify
8 another competing, potentially related action asserting the same privacy violations alleged in the
9 Complaint such that more than one proposed representation structure is possible. Consequently,
10 the court finds that appointment of interim class counsel, at least at this time, is neither necessary
11 to protect the interests of class members nor useful in promoting the efficient administration of
12 Plaintiffs’ claims. See Gallardo v. Bennett, No. C-06-3864 JF (PVT), 2006 U.S. Dist. LEXIS
13 76216, at *8, 2006 WL 2884497 (N.D. Cal. Oct. 10, 2006) (“The Court will not grant a motion for
14 appointment of lead counsel when no other plaintiffs have brought a [] suit and no other counsel
15 claims the position of lead counsel.”).

16 On that basis, the Motion for Appointment of Interim Co-Lead Counsel (Dkt. No. 80) is
17 DENIED WITHOUT PREJUDICE to being renewed, consistent with preceding discussion.

18
19 **IT IS SO ORDERED.**

20 Dated: August 8, 2016

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22 EDWARD J. DAVILA
23 United States District Judge